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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

TELESOCIAL INC.,

Plaintiff,

v.

ORANGE S.A., a French Corporation;
ANNE BENRIKHI, an individual;
DIMITRI DELMAS, an individual;
OLIVIER GODINIAUX, an individual;
GUILLAUME GUIMOND, an individual;
FABRICE PETESCH, an individual;
JACQUES VIEL, an individual;
BARBARA BOBILLIER, an individual;
BENOIT AMET, an individual;
THOMAS LESENECHAL, an individual;
FLORIAN DE SA, an individual;
ANTOINE LECOUTTEUX, an individual;
and SYLVAIN JAUDRY, an individual.

Defendants.

CASE NO. 3:14-CV-03985-JD

**FIRST AMENDED COMPLAINT FOR
VIOLATIONS OF THE COMPUTER
FRAUD AND ABUSE ACT, THE
CALIFORNIA COMPREHENSIVE
COMPUTER DATA ACCESS AND
FRAUD ACT, THE CALIFORNIA
UNIFORM TRADE SECRETS ACT,
BREACH OF CONTRACT, BREACH OF
COVENANT OF GOOD FAITH AND
FAIR DEALING, AND VIOLATION OF
CALIFORNIA UNFAIR COMPETITION
LAW**

DEMAND FOR JURY TRIAL

1 Plaintiff Telesocial Inc. states on information and belief its Amended Complaint against
2 defendants Orange S.A., Anne Benrikhi, Dimitri Delmas, Olivier Godiniaux, Guillaume Guimond,
3 Fabrice Petesch, Jacques Viel, Barbara Bobillier, Benoit Amet, Thomas Lesenechal, Florian de Sa,
4 Antoine Lecoutteux, and Sylvain Jaudry and alleges as follows:

5 **THE PARTIES**

6 1. Plaintiff Telesocial Inc. (“Telesocial”) is a corporation organized and existing under
7 the laws of the State of Delaware, with its principal place of business at 39 Mesa Street, Suite 102,
8 San Francisco, California 94129.

9 2. Defendant Orange S.A. (“Orange”), formerly known as France Télécom S.A., is a
10 French multinational telecommunications corporation organized and existing under the laws of
11 France, with its principal place of business at 78 rue Olivier de Serres, Paris, 75015, France. Orange
12 has an office in San Francisco, California where it houses “the Bay Area division” of Orange¹
13 known as Orange Silicon Valley (“OSV”), and its accelerator program, Orange Fab, which actively
14 scouts out Bay Area-based start-up companies “that could be a good fit with Orange.”² Orange Fab
15 entices start-ups with promises of funding, networking, and office space, and the prospect of a trip to
16 Paris to bring their inventions to Orange directly and meet the “top decision makers of Orange and
17 key executives of other major brands.”³ Thus, if and to the extent OSV and/or Orange Fab are
18 corporate entities formally distinct from Orange, then OSV and/or Orange Fab are the alter ego
19 and/or agents of Orange.

20 3. Defendant Anne Benrikhi is an individual who, upon information and belief, resides at
21 3 rue du Pont d’Amour, Clamart, 92140, France.

22 4. Defendant Dimitri Delmas is an individual who, upon information and belief, resides
23 in France or the United Kingdom.

24 5. Defendant Olivier Godiniaux is an individual who, upon information and belief,
25 resides at 263, rue Lecourbe, Paris, 75015, France.

26
27 ¹ See Who is Orange, available at <http://orangefab.com/about.html>.

28 ² See FAQ, available at <http://orangefab.com/faq.html>.

³ See <http://orangefab.com/index.html>

6. Defendant Guillaume Guimond is an individual who, upon information and belief, resides in France or the United Kingdom.

7. Defendant Fabrice Petesch is an individual who, upon information and belief, resides in France or the United Kingdom.

8. Defendant Jacques Viel is an individual who, upon information and belief, resides in France or the United Kingdom.

9. Defendant Barbara Bobillier is an individual who, upon information and belief, resides in France or the United Kingdom.

10. Defendant Benoit Amet is an individual who, upon information and belief, resides at 38-40, rue du Général Leclerc, Issy Moulineaux Cedex 9, 92794, France.

11. Defendant Thomas Lesenechal is an individual who, upon information and belief, resides in France or the United Kingdom.

12. Defendant Florian de Sa is an individual who, upon information and belief, resides in France or the United Kingdom.

13. Defendant Antoine Lecoutteux is an individual who, upon information and belief, resides in France or the United Kingdom.

14. Defendant Sylvain Jaudry is an individual who, upon information and belief, resides in France or the United Kingdom.

15. The Defendants referenced in Paragraphs 3 through 14 are individually and collectively referred to as the “Individual Defendants,” and at all relevant times acted at the direction of, as employees or agents for, and/or with the consent and knowledge of Orange and/or OSV.

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JURISDICTION AND VENUE

16. This Court has subject matter jurisdiction, pursuant to 28 U.S.C. § 1331, over Telesocial's claims under the Computer Fraud and Abuse Act, codified at 18 U.S.C. § 1030. This Court has supplemental jurisdiction, pursuant to 28 U.S.C. § 1367, over Telesocial's claims arising under California law. This Court also has jurisdiction pursuant to 28 U.S.C. § 1332 because the matter in controversy exceeds the sum or value of \$ 75,000, exclusive of interest and costs, and the action is between Telesocial, a citizen of California, and Orange, a citizen of France, and the Individual Defendants, citizens of France or England.

17. This Court has personal jurisdiction over each Defendant because he, she, or it has (i) committed acts of computer fraud in this judicial District; and/or (ii) regularly does and/or has done business, solicits or has solicited business, engages or has engaged in other persistent courses of conduct, and/or derives or has derived substantial revenue from products and/or services provided to persons in this District and in this State; and/or (iii) has an alter ego or agent domiciled in this judicial District such that the jurisdictional contacts of that alter ego or agent are imputed to each such Defendant. This Court's personal jurisdiction over at Defendants is additionally established by California Penal Code § 502(j), which provides that "a person who causes, by any means, the access of a computer, computer system, or computer network in one jurisdiction from another jurisdiction is deemed to have personally accessed the computer, computer system, or computer network in each jurisdiction." As described below, Defendants unlawfully accessed Telesocial's computers, computer systems, or computer networks—all of which have been located in Emeryville, California at all times relevant to this Amended Complaint. Further, each Defendant knew that Telesocial's computers, computer systems, and computer networks were located in California; that Telesocial was located in San Francisco, California; and that Telesocial would suffer damages in California.

18. Venue is proper in this judicial District pursuant to 28 U.S.C. §§ 1391(b) and/or (c) because a substantial part of the events giving rise to the claims occurred in this judicial District, a substantial part of the property that is the subject of this action (Telesocial's computer servers and computer code) is situated in this judicial District, and/or because the Court has personal jurisdiction in this judicial District over each Defendant. Defendants have, as set forth below, committed acts of

1 computer fraud and misappropriation of trade secrets within this District; and Telesocial resides in
2 and suffered damages in this District. Venue is additionally proper pursuant to California Penal Code
3 § 502(j), which provides that “a person who causes, by any means, the access of a computer,
4 computer system, or computer network in one jurisdiction from another jurisdiction is deemed to
5 have personally accessed the computer, computer system, or computer network in each jurisdiction.”
6 As described below, Defendants unlawfully accessed Telesocial’s computers, computer systems, and
7 computer networks located within the Northern District of California.

8 **FACTUAL BACKGROUND**

9 19. On November 21, 2012, during a highly publicized press showcase, Chief Executive
10 Officer of Orange, Stéphane Richard, and Chief Operating Officer of Facebook, Sheryl Sandberg,
11 appeared on an international stage to claim credit for developing a revolutionary new social calling
12 product they dubbed “Party Call.” But it was Telesocial, a San Francisco-based start-up company,
13 and not Orange or Facebook, that invented, designed, and developed this social calling innovation,
14 which even today represents a new frontier in technology and communication.

15 20. The twisted path that led to Stéphane Richard and Sheryl Sandberg being on stage
16 together that day was paved with concerted deceit, misappropriation, old-fashioned theft, and, above
17 all, remarkable hubris. Just six months earlier, Telesocial and Orange were deep into negotiations to
18 partner in bringing this social calling product to market. Orange had long understood the important
19 role social calling would play in the future of their industry, but its multi-year effort to develop
20 something in-house had been an abject failure. Then, along came Telesocial and a series of meetings
21 that confirmed that everyone at every level of Orange loved what Telesocial had built—right up to
22 Orange’s CEO.

23 21. But instead of partnering with Telesocial, Orange used Telesocial’s ideas and
24 intellectual property to secure the coveted mobile innovation partnership with Facebook that had
25 eluded them for years. Banding together, these tech industry giants decided to steal Telesocial’s
26 social calling technology, and arrogantly cast Telesocial aside believing they had duped the small
27 start-up company into disclosing the information they needed to copy Telesocial’s products. There
28 was just one problem. When Orange and Facebook went to execute on their scheme, they

1 discovered Telesocial's innovations were not easily replicated, and certainly not in time for the
2 planned international announcement by their senior-most executives. What they did next gives rise
3 to this lawsuit.

4 22. Desperate to launch their copy of Telesocial's technology, and instead of partnering
5 with the true inventor of the technology, Orange, a partially state-owned French telecommunications
6 leviathan, and Facebook, a global social networking goliath, resorted to simply stealing what they
7 needed to get the job done. Orange hacked Telesocial's computer servers over and over again,
8 raided Telesocial's proprietary code and functionality, and used that unlawfully obtained information
9 to reverse engineer a knock-off product that Orange and Facebook would later claim they developed
10 together from scratch.

11 23. November 21, 2012, should have been a coronation of sorts for Telesocial. That
12 magic, transformative moment that every start-up exists to chase, where valuations are catapulted
13 overnight into the stratosphere. Instead, it was the day that Telesocial learned that it had been
14 swindled. Orange did not kill the switch on Telesocial because it found a better partner or product,
15 or because Telesocial's price was too great (an excuse they would use later). Rather, Orange
16 conceitedly believed that it was above the law and that, with Facebook on its side, it could do with
17 the small start-up as it pleased. Orange almost got away with it too, only this time, the little start-up
18 caught them red-handed.

19 **I. TELESOCIAL DEVELOPS A PROPRIETARY SOCIAL CALLING TECHNOLOGY**

20 24. Telesocial was founded in 2008 by co-founders Bill Waytena ("Waytena") and Eric
21 Stone ("Stone"). The company spent many years developing technology and related processes in
22 anticipation of a shift in the telecommunications industry away from the traditional networks and
23 calling plans defined solely by phone numbers that we all have now, and toward broader offerings
24 that would leverage the more expansive social network graph.

25 25. Telesocial developed a software application ("Call Friends") based on a custom
26 application programming interface ("API") that lets users of social networks (such as Facebook)
27 place carrier-based telephone calls to their "friends." Specifically, Call Friends offers mobile
28 subscribers a direct phone connection to people in their social network through "social identities"

1 instead of traditional phone numbers, while still experiencing the connection as a phone call where
2 mobile phones ring and callers are connected voice-to-voice with “pin-drop” sound quality. In
3 addition to one-to-one calls, Telesocial’s Call Friends also allows users to initiate virtual conference
4 call rooms, enabling multiple people in a social network to connect to each other simultaneously,
5 much like a traditional conference call only without a single a phone number.

6 26. Call Friends was built from the ground up to provide an integrated Facebook
7 experience. As a result, it offers a number of user-friendly and commercially attractive social
8 network features, including, without limitation, the following:

- 9 a. the Telesocial Call Friends application can (i) determine which of a Facebook user’s
10 friends are participating in a call; (ii) inform the user’s friend via the friend’s
11 Facebook timeline that the user is participating in a call with others; and (iii) invite
12 and enable the user’s friend to join the call; and
13 b. the Telesocial Call Friends application can read the contact information from the
14 user’s phone, and integrate that contact information with the user’s Facebook
15 account, to enable the user to initiate individual and group calls on the user’s phone to
16 his or her combined social and telephone friend networks.

17 27. The telephony backbone of Call Friends is Telesocial’s proprietary software switch,
18 or “softswitch,” that handles call routing and execution. By layering the social network graph onto a
19 telecommunications carrier’s infrastructure through the sophisticated softswitch, Call Friends offered
20 subscribers the consistent, “pin-drop” quality experience that was previously available only over
21 traditional mobile carrier networks. This advancement offered significant reliability and call quality
22 improvements over existing voice over internet protocol (“VoIP”) technologies.

23 28. Telesocial’s social calling platform represents a quantum leap forward with respect to
24 integrating the businesses and business models of mobile carriers and social networks. It meant that
25 carriers, like Orange, were no longer limited to providing service only to direct mobile-to-mobile
26 connections because now they could drive social network calling traffic through their mobile
27 infrastructure and capture billing events and the associated revenue in real time. And it meant that
28

1 social networks, such as Facebook, had a near turn-key solution that would allow them to capture
2 and share revenue associated with calls originating from within their products.

3 **II. TELESOCIAL'S DISCUSSIONS WITH ORANGE**

4 29. Like so many United States based start-ups, Telesocial was initially introduced to
5 Orange through OSV's Orange Fab. Talks between the two companies began in February 2012 and
6 ensued at a torrid pace. Telesocial's founders first spoke with Pascale Diaine, the lead for Orange
7 Fab in the San Francisco Bay Area. The next month, March 2012, Telesocial met Yann Kandelman,
8 OSV's Head of Digital Development with responsibility for overseeing Orange's internet and mobile
9 partnerships with major market players, including Facebook and Twitter. In early April 2012,
10 Telesocial met with two Orange executives, Benoit Amet and Catherine Le Drogo-Ferrari. At each
11 of these meetings, Telesocial gave a feature-level presentation of what it had built and where it was
12 going next. And each time the Orange audience responded with excitement and escalated the
13 process.

14 30. With Telesocial having passed all of Orange's pre-screening, Amet emailed Waytena
15 on April 24, 2012, to offer that Orange "would like to go deeper with the Telesocial service and get
16 some more details about the following items: Technical (platform architecture overview, scalability,
17 mobile applications developments, Facebook API used, integration with Orange networks & IS,
18 ...); Marketing (features, customer path, roadmap, ...); Legal (voice flows, legal obligations,
19 ...); Business (business model based on the additional revenue is not clear for us)."

20 31. A series of technical and business meetings ensued that lasted through July 31, 2012,
21 and Telesocial also fielded countless phone calls and emails from Orange employees and/or agents.
22 Orange participants in the various meetings and communications during that time frame included:
23 Xavier Perret, Benoit Amet, Catherine Le Drogo-Ferrari, Fabrice Petesch, Guilhem Caumel,
24 Philippe Streiff, Olivier Godiniaux, Yann Kandelman, Pascale Diaine, Frederic Martelli, Laurent
25 Castaignet, Anne Benrikhi, Barbara Bobillier, Bertrand Guisnet, Emmanuelle Desodt, and Eva
26 Charbonnier.

27 32. Orange's technical deep-dive of Telesocial's products occurred in June 2012. This
28 meeting lasted for several hours and was attended by Orange's mobile business executives, social

1 calling team, research and development team, and key decision makers from Orange France (the
2 customer side of Orange's business). To the extent Telesocial was willing to disclose it, Telesocial
3 presented the information Amet had requested, and fielded numerous technical questions from
4 Orange employees regarding Call Friends, the API, and the softswitch technologies. Members of
5 Orange's team probed Waytena and Stone for technical and other details about the Call Friends
6 application and even took photos of the illustrations Telesocial drew during the meeting. Orange
7 also asked about the customer experience on Orange's platform, including, for example, questions
8 about billing capabilities and whether Telesocial could work within Orange's billing parameters.
9 Orange even asked about branding, and Telesocial told them that it had successfully market tested
10 the name "Party Call."

11 33. The key technical aspects of what Telesocial had built that Orange expressed
12 particular amazement and interest in include:

- 13 i. the ability for mobile customers to call their social network contacts on
14 platforms such as Facebook, Google+, and Twitter without needing to know
15 that contact's phone number;
- 16 ii. the ability to make calls to a mobile phone from an application that can be
17 used on multiple platforms, including desktop computers, tablets, laptops, and
18 smart phones;
- 19 iii. the option to make one-to-one calls or group calls, and to elect whether those
20 calls would be public or private while still operating within Facebook;
- 21 iv. the notification triggered on a user's Facebook wall when that user places a
22 phone call;
- 23 v. the ability for a user to join an ongoing call by simply clicking on the
24 notification that appears in the Facebook newsfeed/log; and
- 25 vi. the potential to identify Facebook users with a mobile phone subscription
26 from Orange and differentiate between such users and others accessing the
27 application in terms of billing or preferred access to special features.
28

1 34. Orange's team was visibly excited and provided Telesocial with enthusiastic feedback.
2 Orange informed Waytena and Stone that Orange's social calling team had been under immense
3 pressure for two years to come up with a social calling solution, but had been unable to deliver, and
4 certainly had not thought of the features Telesocial's technology offered. Guilhem Caumel, Head of
5 Mobile Digital Services at Orange France, who was identified as a key decision maker, told Waytena
6 and Stone that he loved what they had done. Confirming the obvious, Orange advised Telesocial that
7 it was a huge hit with their CEO, Stéphane Richard, and, with Orange France.

8 35. During all of this interaction, Waytena and Stone were responsive to Orange's
9 requests and provided the information that Orange required to perform its due diligence. But,
10 consistent with Telesocial's ordinary business practices of not giving the shop away, Telesocial was
11 willing to disclose some of the features of their social calling platform but now how those features
12 were specifically implemented. Telesocial elected to keep that information confidential unless and
13 until Orange memorialized their intent to partner with Telesocial in an executed agreement.

14 36. There can be no doubt that Orange was, at that point, committed to launching
15 Telesocial's social calling product. Orange's CEO, Stéphane Richard, had chosen Telesocial's
16 product to be a key innovation introduced as part of a social calling initiative he intended to
17 announce in November 2012. On July 4, 2012, Amet told Waytena that Telesocial was being
18 offered a Production Contract—the golden development deal any technology start-up shoots for—
19 and that the contract would need to be negotiated quickly, by July 31, 2012.

20 37. Although Telesocial did not know it at the time, what was actually going on is that
21 Orange—at the very same time they were “negotiating” with Telesocial—was trying to build their
22 own application to mimic the feature set they had seen in Call Friends. In fact, Orange had even
23 been pitching Telesocial's technology to Henri Moissinac, Facebook's then-Director of Mobile (and
24 also a former France Telecom employee), a key industry player that Orange had been unsuccessful
25 in courting with its prior iterations of social calling concepts. Orange shared Telesocial's screen
26 shots and other confidential information with Facebook, without Telesocial's knowledge or consent,
27 to sell them on the product. Moissinac and other mobile technology leaders at Facebook, including
28 Bruce Hazan and Fergal Walker, immediately saw the value in Telesocial's innovation and not only

1 agreed to partner with Orange, but also dedicated a team of engineers to assist Orange in its efforts
2 to launch these exciting social calling features.

3 38. Within days of convincing Facebook to become their social calling partner, Orange
4 backpedaled on their commitment to Telesocial. Rather than the promised production contract,
5 Orange now told Telesocial that it would have to work under a less appealing, short-term proof of
6 concept contract *and* grant Orange exclusivity. Orange, nevertheless, continued to hold out the
7 golden carrot of a possible production contract to prolong discussions with Telesocial.

8 39. Eventually, once Orange was assured it would have Facebook's assistance in building
9 a Call Friends imitation, Orange cast Telesocial aside. After Telesocial and Orange had engaged in a
10 series of meetings and communications dedicated to hammering out the details of the proposed proof
11 of concept contract, Orange abruptly cut off negotiations claiming that Telesocial's price of
12 € 850,000 (roughly \$1 million) was a "no go." Telesocial knew immediately that the price dispute
13 was a false pretext because Waytena told Amet and Le Drogo-Ferrari in a prior meeting, on July 18,
14 2012, that the price of what Orange was proposing would have to be \$1 million or more and they
15 responded that they understood and it would be fine because "our CEO wants the product."

16 **III. ORANGE STEALS FROM TELESOCIAL**

17 40. Under tight pressure to deliver to Orange's CEO on an expedited timeline,
18 Defendants faced a high-stakes and Herculean task. On August 30, 2012, Defendant Godiniaux
19 wrote to another Orange employee that Orange's "FUT [(first user test)] still planned for 11/20,
20 which is a very tight schedule because we will not be able to use a turnkey solution (since Telesocial
21 wants €850K!!) and so we will have to develop everything." (Dkt. 26-2, Exhibit 2 to Defendants'
22 Request for Judicial Notice at Paragraph 98 of Certified Translation.)

23 41. Presumably realizing that they were not going to be able to meet this goal even with
24 Facebook's help, Defendants decided that stealing from Telesocial was the perfect shortcut.
25 Beginning on August 31, 2012, and continuing throughout the entire period that Orange and
26 Facebook worked to develop a social calling application, Defendants were accessing Telesocial's
27 Call Friends application hosted on the Emeryville servers without authorization in a furious effort to
28 collect clues that would allow them to recreate the key features of Telesocial's product.

42. Specifically, between August 31, 2012 and December 19, 2012, Defendants registered and accessed Telesocial's application and Emeryville computer servers without authorization repeatedly, sometimes several times in a single day, using a variety of user names and corresponding telephone numbers as follows:

| Assumed Real Name | Account Name(s) Created by User | Telephone Number Registered by User | Dates of unauthorized access of Telesocial's application and computer servers (2012) |
|--------------------|---|---|--|
| Anne Benrikhi | Anne Orange; Anne Benrikhi; Anne Myne Anne Dornier | +33 6 07 48 87 07 +33 6 43 05 08 52 +33 6 79 84 03 63 | September 6, 10, 11, 12, 13, 19, 20, 24, 25; October 16, 25, 29; November 16, 20, 23, 30 |
| Dimitri Delmas | Dimitri Delmas | +33 6 84 03 92 99 | September 19 |
| Olivier Godiniaux | Karl Tangerine | +33 6 78 76 05 71 | August 31; September 5, 6, 10, 11, 12, 13, 19, 25; October 16, 25, 29; November 16 |
| Guillaume Guimond | Guillaume Guimond | +33 6 30 76 34 94 | September 10, 12, 13 |
| Jacques Viel | Jacque Viel | +33 6 64 89 72 68 | September 6, 13, 19, 20; October 25; November 20 |
| Barbara Bobillier | Barbara Testbis | +33 6 33 65 92 36 | August 31; September 5, 6, 10, 11, 12, 13, 19, 20, 24; October 16, 25; November 30 |
| Fabrice Petesch | Fab Thefabulousfab | +33 6 74 49 38 67 | September 6 |
| (unknown) | Mila Lemon | +33 6 40 71 97 45 | August 31, September 5, 6, 10, 11, 12, 13 |
| Thomas Lesenechal | Thomas Lesenechal Thomas Orange | +33 6 33 65 92 36 | Thomas Lesenechal: September 7, November 16, December 19th Thomas Orange: September 6, 7, 10, 12, 13, 19, 20, 24 October 25, 29 November 24, 25, 26, 28, 30, December 4 |
| Benoit Amet | Benoit Amet | +33 6 71 60 95 77 | September 10, 13 |
| Florian De Sa | Florian De Sa | n/a | September 7, 12, October 12, November 23 |
| Antione Lecoutteux | Antione Lecoutteux | n/a | September 17, 24 October 18 |
| Sylvain Jaudry | Sylvain Jaudry | n/a | December 4 |

1 43. Several of these user names or fictitious identities correspond with known agents and
2 employees of Orange who were involved with Telesocial and/or are responsible for marketing, social
3 calling development, ergonomics, creative direction and design, and technical and software
4 engineering for Orange.

5 44. Given Orange's termination of discussions with Telesocial one month prior,
6 Defendants did not have permission to access Telesocial's application and they knew it. To evade
7 detection, Defendants used fictitious Facebook accounts and aliases to register for and download the
8 Call Friends application. Through this fraud, Defendants were able to access Telesocial's
9 Emeryville servers and all of the information the application presents to the user. Moreover,
10 Telesocial's records show that Defendants made dozens of test phone calls and executed various
11 routines and functions so that they could obtain information about Telesocial's platform.

12 45. In addition, Defendants used unauthorized hacking tools—the software analog of a
13 crowbar or a lock pick—to gain unauthorized access to Telesocial's proprietary information and
14 trade secrets that could not be accessed without such tools. Defendant Guimond referenced such
15 tools when he suggested he would forward to Defendant Godiniaux a copy of “code to Telesocial's
16 webpage containing the ‘join the conference’ button” corresponding to Telesocial's conference
17 calling function that he copied from Telesocial's server, “if [Godiniaux] thinks it's worth inspecting
18 their pages in greater detail and if you have *tools to go into greater detail/depth*.” (Dkt. 26-2,
19 Exhibit 2 to Defendants' Request for Judicial Notice at Paragraph 92 of Certified Translation
20 (emphasis added).) Following up on that communication, Mr. Godiniaux confirmed that he did, in
21 fact, examine Telesocial's web pages housed on its computer servers in greater detail “to identify a
22 bit how the webapp is designed.” (*Id.* at Paragraph 93.) Given that special tools and programs were
23 required to to access this information, Defendants knew they did not have authorization to access it.

24 46. Most troubling, Defendants' illicit activity spiked in the first week of September
25 2012, precisely when Orange had scheduled a “Facebook Hack Session” in London with “Facebook”
26 dedicated engineers,” the original purpose of which, according to Orange, was to develop custom
27 features for Orange's planned launch of Call Friends in November 2012.

1 47. Through their repeated unauthorized access to the Telesocial's application and
2 computer servers, Defendants obtained information regarding the logic flow—the specific
3 combination of modules and routines used in Telesocial's technology—and whole-sale copied the
4 code responsible for Call Friends' most important and valuable features and/or obtained clues that
5 allowed it to reverse engineer the same. For example, Defendants copied and/or obtained
6 information that enabled them to reverse engineer the software code by which the Telesocial
7 application announced a conference call on Facebook users' timelines, and to invite those users to
8 join those calls. Defendants also copied and/or obtained information from which they were able to
9 reverse engineer the software code that enabled users to integrate their contact information from
10 their mobile devices with the Telesocial application. In other words, Defendants stole the very
11 information Waytena and Stone choose not to voluntarily disclose to Orange.

12 48. Defendants further caused the Telesocial application to execute routines and
13 functions, such as the Join Call invitation that appears on a user's Facebook timeline, so that
14 Defendants could access Telesocial's specific combination of modules and routines used to create
15 that functionality, and copy and/or set clues that would allow it to reverse engineer the software code
16 responsible for such features.

17 49. As part of their efforts to misappropriate Telesocial's intellectual property,
18 Defendants also placed or caused to be placed approximately 97 unauthorized international long-
19 distance telephone calls via Telesocial's application—including a number of conference calls—
20 between the dates of August 31, 2012 and December 19, 2012. The total duration for these calls was
21 approximately 266 minutes. As Defendants knew they would be, the charges for the calls were billed
22 to Telesocial.

23 50. The calls were placed from telephone numbers corresponding to the following
24 Orange employees or agents: Ms. Benrikhi, Ms. Dornier, Mr. Godiniaux, Mr. Guimond, Mr. Viel,
25 Ms. Bobillier, Mr. Lesenechal, and "Mila Lemon."

26 51. In addition, Defendants tested various other features of the Telesocial application,
27 such as adding individuals to existing telephone calls. Several of the Individual Defendants who
28 registered to use the Telesocial application, including Mr. Petesch and Ms. Benrikhi, uploaded

1 mobile phone book data to Telesocial's servers, thereby altering and/or adding data to Telesocial's
2 servers. Defendants also investigated how Telesocial's application integrated with Facebook's
3 social networking systems through this unauthorized access by testing and initiating several of the
4 application's Facebook interactive features.

5 52. Defendants' unauthorized activities were done at the direction and with the
6 knowledge and consent of high-level managers of Orange, OSV, and Facebook, who knew and
7 intended that Telesocial's confidential software code was being copied, downloaded, distributed, and
8 reverse engineered by Defendants.

9 53. Defendants and any other engineers that participated in the activity and events recited
10 herein, including any Facebook engineers who received the fruits of Defendants' looting, were
11 actively involved in the copying and/or reverse engineering of Telesocial's application and related
12 technologies, and/or agreed and intended that such copying and reverse engineering should occur to
13 enable Defendants to copy Telesocial's social calling technology without Telesocial's knowledge,
14 consent, or participation.

15 **IV. ORANGE AND FACEBOOK PUBLICLY ANNOUNCE A COPY OF TELESOCIAL'S** 16 **SOCIAL CALLING APPLICATION**

17 54. On November 21, 2012, at Orange's Hello! conference for its shareholders and
18 customers, Orange's CEO, Stéphane Richard, announced that Orange had been working with
19 Facebook on a social calling initiative. Mr. Richard introduced Sheryl Sandberg, who offered
20 remarks through a video conference screen expressing Facebook's excitement at partnering with
21 Orange in the social calling space and announcing "a new set of features launching as the result of
22 our collaboration between Facebook and Orange." During this same press event, following Sheryl
23 Sandberg's appearance, Orange announced it would be launching a new social calling technology
24 with Facebook that they had remarkably dubbed, of all things, "Party Call"—the same name that
25 Telesocial had specifically disclosed to Orange.

26 55. According to Mr. Richard, Party Call was to have the same features as Telesocial's
27 Call Friends application—including features that Orange personnel stated Orange engineers had not
28 even conceived of prior to their talks with Telesocial—the same features that Defendants had copied

1 and/or illegally reverse engineered through their unlawful access of Telesocial's servers and
2 proprietary information. For example, Mr. Richard described the Party Call application as being
3 capable of both posting on a Facebook user's timeline an invitation to join a call that their friends
4 were participating in and integrating users' contact information from their mobile devices with the
5 Party Call application.

6 56. Although Orange knew and Facebook knew or should have known that these and
7 other features of the Party Call application were carbon copies of Telesocial's technology, and that
8 Orange was unable to even replicate them before robbing Telesocial's intellectual property, Orange
9 and Facebook brazenly and publicly claimed all the credit for the Party Call application.

10 57. Orange's Xavier Perret was quoted in a November 21, 2012 article written by Ingrid
11 Lunden for TechCrunch as saying: "When we approached Facebook with this idea they were pretty
12 excited," and "[i]t's different for them than just an application." Perret claimed that "key developers
13 both at Orange and Facebook" were solely responsible for developing Party Call, without ascribing
14 any credit to Telesocial. Citing Perret as the source, the article went on to cite features of Party Call
15 that are central to Telesocial's innovation, including that:

16 Party Call is not an IP calling service similar to what Orange's new
17 VoIP service Libon, or Skype, offer. Instead, it routes calls directly to
18 Orange's voice network. As such, it becomes a bridge between the
social network and legacy voice services to offer "group calling within
the Facebook environment.

19 58. Since the initial announcement of Party Call, Orange has introduced to market a
20 service called "Evercall," which incorporates some of the features of the pilfered Party Call product
21 presented on November 21, 2012. Orange has also launched what it calls "Party Call Lite," which
22 incorporates a subset of the features disclosed by Telesocial during the course of the negotiation
23 period including: (i) the ability to make social calls that are either private or publicly announced; (ii)
24 the ability for users to see in real time who is participating in a conference call; and (iii) the ability to
25 identify and join an ongoing conversation through a notification that appears on a user's Facebook
26 news feed.

27 59. Telesocial did not discover, and did not know of facts that would have caused a
28 reasonable person to suspect, that Defendants had engaged in the wrongful copying,

1 misappropriation, and/or reverse engineering of Telesocial's confidential information until Orange's
2 and Facebook's joint announcement of Party Call on November 21, 2012. Further, it was not until
3 nearly a year later that Telesocial began to suspect—and an investigation confirmed—that
4 Defendants had unlawfully accessed Telesocial's secure servers without authorization in order to
5 copy, misappropriate, and/or illegally reverse engineer Telesocial's trade secrets and technology.

6 60. Defendants' actions have caused significant harm to Telesocial. By accessing
7 Telesocial's computer servers without authorization, and thereafter using the information obtained
8 through that access to copy and reverse engineer Telesocial's proprietary application and related
9 technologies, Defendants were able to effectively commandeer Telesocial's technology and rebrand
10 it with the Orange and Facebook brands. As a result, Orange and Facebook are perceived as the
11 inventors and developers of social calling features that were actually invented and developed by
12 Telesocial. Due to Defendants' actions described herein, Telesocial has been unable to license or
13 otherwise commercialize its application, causing it to lose substantial revenue and business
14 opportunities.

15 **COUNT ONE: VIOLATION OF THE COMPUTER FRAUD AND ABUSE ACT**

16 18 U.S.C. §1030

17 (Against All Defendants)

18 61. Telesocial realleges and incorporates by reference the above paragraphs of this
19 Amended Complaint as though fully set forth herein.

20 62. At all relevant times, the software code responsible for the operation of the Telesocial
21 Call Friends application, the Telesocial API, and the softswitch were stored on and executed by
22 secure computer servers located in Emeryville, California.

23 63. The Telesocial computers that Defendants accessed without authorization are
24 protected computers because they are used in and affect interstate and foreign commerce and/or
25 communication. In particular, the Telesocial computers are designed to be accessed, and were
26 accessed by Defendants, globally, including from locations in France and England. In addition, the
27 Telesocial computers are designed to be used, and were used by Defendants, to place and route
28 telephone calls throughout the United States and the world.

1 64. Telesocial restricted access to its social calling application, which resides on its
2 computer servers. This application was only available to users that had a valid Facebook account
3 associated with authentic user identification information. Telesocial also required users to accept its
4 Terms of Use, including the restrictions on access contained therein, prior to, and as a condition of,
5 being permitted to access their application. Telesocial also reserved the explicit right to terminate
6 user access for violations of its restrictions on access.

7 65. The Telesocial application was restricted by and subject to Telesocial's Terms of Use.
8 As such, even legitimate users were only permitted to access the information that the application
9 presented on the user interfaces. This does not include any information about the Telesocial API, the
10 softswitch, or how they communicate with each other or Facebook over a network. At no point did
11 Telesocial grant access to any of this information, which was only available through hacking tools or
12 direct access to Telesocial's servers, which required credentials, i.e. a login and password, known
13 only to Telesocial's internal engineers like Stone. Telesocial's servers were also protected by
14 technological barriers, including firewalls, to prevent unauthorized access through the internet.

15 66. At the time they accessed Telesocial's computer servers, Defendants, all sophisticated
16 and experienced in matters of technology, knew access to Telesocial's computer servers was not
17 authorized and employed measures both to circumvent access barriers and to evade detection for
18 doing so. Defendants access was without authorization and/or in excess of authorization for, at least,
19 the reasons that: (i) Defendants created fictitious Facebook accounts and provided fake user
20 information (*see, e.g.*, "Thomas Orange") to avoid detection and circumvent Telesocial's access
21 requirements; and/or (ii) Defendants fraudulently, and with no intent of complying, circumvented
22 Telesocial's contractual barrier to unauthorized access by assenting to Telesocial's access conditions
23 and restrictions even though, at the time of assent, they were not in compliance with the same;
24 and/or (iii) Defendants employed hacking tools to circumvent technological barriers and gain access
25 to code and other information on Telesocial's servers that could not be accessed without the use of
26 such tools.

- 1 67. Through its investigation, Telesocial has identified the following incidents:
- 2 i. Ms. Benrikhi, without Telesocial's authorization and/or in excess of
- 3 authorized access, accessed the Telesocial application and computer servers
- 4 on or about October 4, 13, and 25, 2012; and November 20, 23 and 30, 2012.
- 5 In addition, Ms. Benrikhi, without Telesocial's authorization and/or in excess
- 6 of authorized access, placed and/or joined telephone calls using Telesocial's
- 7 computer servers on or about September 10, 19, and 20, 2012; October 29,
- 8 2012; and November 20, 23 and 30, 2012.
- 9 ii. Mr. Delmas, without Telesocial's authorization and/or in excess of authorized
- 10 access, accessed the Telesocial application and computer servers on or about
- 11 September 19, 2012.
- 12 iii. Mr. Godiniaux, without Telesocial's authorization and/or in excess of
- 13 authorized access, accessed the Telesocial application and computer servers
- 14 on or about August 31; September 10, 11, 12, 13, 19, 20, and 25, 2012;
- 15 October 16, 25, and 29, 2012; and November 16 and 23, 2012. In addition,
- 16 Mr. Godiniaux, without Telesocial's authorization and/or in excess of
- 17 authorized access, placed and/or joined telephone calls using Telesocial's
- 18 computer servers on or about August 31, 2012; September 5, 6, 11, 12, and
- 19 13, 2012; and November 24, 2012.
- 20 iv. Mr. Guimond, without Telesocial's authorization and/or in excess of
- 21 authorized access, accessed the Telesocial application and computer servers
- 22 on or about September 10 and 12, 2012. In addition, Mr. Guimond, without
- 23 Telesocial's authorization and/or in excess of authorized access, placed and/or
- 24 joined telephone calls using Telesocial's computer servers on or about
- 25 September 12 and 13, 2012.
- 26 v. Mr. Petesch without Telesocial's authorization and/or in excess of authorized
- 27 access, accessed the Telesocial application and computer servers on or about
- 28 September 6, 2012.

- vi. Mr. Viel, without Telesocial's authorization and/or in excess of authorized access, accessed the Telesocial application and computer servers on or about September 6, 13, 19, and 20, 2012; October 25, 2012, and November 20, 23, and 30, 2012. In addition, Mr. Viel, without Telesocial's authorization and/or in excess of authorized access, placed and/or joined telephone calls using Telesocial's computer servers on or about September 6 and 13, 2012, and November 20, 2012.
- vii. Ms. Bobillier, without Telesocial's authorization and/or in excess of authorized access, accessed the Telesocial application and computer servers on or about August 31, 2012; September 5, 6, 10, 11, 12, 13, 19, 20, and 24, 2012; October 16 and 25, 2012, and November 30, 2012. In addition, Ms. Bobillier, without Telesocial's authorization and/or in excess of authorized access, placed and/or joined telephone calls using Telesocial's computer servers on or about September 10, 2012, and October 29, 2012.
- viii. Mr. Lesenechal, without Telesocial's authorization and/or in excess of authorized access, accessed the Telesocial application and computer servers on or about September 6, 7, 10, 12, 13, 19, 20, and 24, 2012; October 25 and 29, 2012; November 16, 24, 25, 26, 28, and 30, 2012; and, December 4 and 19, 2012. In addition, Mr. Lesenechal, without Telesocial's authorization and/or in excess of authorized access, placed and/or joined telephone calls using Telesocial's computer servers on or about September 6 and 13, 2012, and November 20, 2012.
- ix. Mr. Amet, without Telesocial's authorization and/or in excess of authorized access, accessed the Telesocial application and computer servers on or about September 10 and 13, 2012.
- x. Mr. De Sa, without Telesocial's authorization and/or in excess of authorized access, accessed the Telesocial application and computer servers on or about September 7 and 12, 2012; October 12, 2012; and, November 23, 2012.

1 xi. Mr. Lecoutteux, without Telesocial's authorization and/or in excess of
2 authorized access, accessed the Telesocial application and computer servers
3 on or about September 17 and 24, 2012; and October 18, 2012.

4 xii. Mr. Jaudry, without Telesocial's authorization and/or in excess of authorized
5 access, accessed the Telesocial application and computer servers on or about
6 December 4, 2012.

7 68. Although Telesocial's investigation is ongoing, Telesocial is not aware of the true
8 identity of all of the individuals who gained unauthorized access to Telesocial's server. In
9 particular, at precisely the same time as Defendants' looting, Telesocial's was somehow accessed by
10 users that had "ghost" Facebook accounts for which no underlying user can be identified.

11 69. Defendants intentionally accessed Telesocial's protected computers without
12 authorization and/or in excess of authorized access, and: (i) thereby obtained information from those
13 protected computers including, without limitation, information regarding how Telesocial's
14 application, API, and softswitch work, and how those components communicate with each other and
15 Facebook; and/or (ii) as a result of such conduct, caused damage and loss to Telesocial as described
16 further below.

17 70. Defendants knowingly and with intent to defraud accessed Telesocial's protected
18 computers without authorization and/or in excess of authorized access and by means of such conduct
19 furthered the intended fraud and obtained from Telesocial its proprietary software code and other
20 confidential information, such code and information being worth more than \$5,000 in one or more 1-
21 year periods between August 31, 2012 and the present, including without limitation the 1-year period
22 from August 31, 2012 to August 31, 2013. Defendants used deceit and trickery to circumvent
23 Telesocial's access barriers and restrictions to obtain unauthorized copies of Telesocial's code and to
24 execute various programs, routines, and functions on Telesocial's computer servers so that they
25 could steal the information necessary to create a social calling application embodying Telesocial's
26 innovations that they would later falsely claim they developed independently.

27 71. Defendants knowingly caused the transmission of a program, information, code, or
28 command, and as a result of such conduct, intentionally caused damage, without authorization, to a

1 protected computer. Defendants intentionally executed commands, including placing numerous
2 phone calls, joining calls, and colliding calls designed to cause errors and failures on Telesocial's
3 computer servers. Defendants also uploaded data and employed hacking tools, thereby transmitting
4 programs, information, code, and/or commands intended to dissect Telesocial's code and cause
5 failures in Telesocial's Call Friends application and softswitch. The full extent of the damage
6 caused by Defendants activities remains unknown, but at a minimum caused network congestion,
7 degraded performance, and forced repeated in person visits by Telesocial's engineers to the
8 Emeryville, California server location to assess security breaches, diagnose and repair the system,
9 and/or restore service to Telesocial's authorized users.

10 72. At all relevant times, the Individual Defendants acted with the knowledge and
11 consent of Orange, and/or as agents of Orange.

12 73. Each of the Defendants, between and among themselves: (i) conspired and agreed to
13 participate in a scheme to access Telesocial's computer servers without authorization and/or in
14 excess of authorization for the purpose of obtaining Telesocial's proprietary information and code;
15 (ii) committed acts or engaged in wrongful conduct in furtherance of that scheme including by
16 creating fictitious Facebook accounts and aliases to conceal their conduct, accessing Telesocial's
17 computer servers and obtaining proprietary information and code from those servers, and using
18 hacking tools to access proprietary information and code from Telesocial's servers; and, (iii)
19 Telesocial was harmed and suffered damages as a result of Defendants' conduct.

20 74. As a result of Defendants' actions, Telesocial has suffered economic damages and
21 losses in an amount not yet ascertained, but aggregating at least \$5,000 in value, over one or more 1-
22 year periods between August 31, 2012 and the present, including without limitation the 1-year period
23 from August 31, 2012 to August 31, 2013. The damage included, without limitation, the theft of
24 Telesocial's proprietary trade secrets and technology, damage and service interruptions to
25 Telesocial's products and computer servers requiring Telesocial to repair the same, the placement of
26 international phone calls that were charged to Telesocial, and the costs associated with conducting
27 an investigation into Defendants' unauthorized access and the resulting damages. Telesocial is
28

entitled to recover damages adequate to compensate it for Defendants' illicit activities in an amount to be determined at trial.

**COUNT TWO: VIOLATION OF THE CALIFORNIA COMPREHENSIVE
COMPUTER DATA ACCESS AND FRAUD ACT**

Cal. Pen. Code § 502

(Against All Defendants)

75. Telesocial realleges and incorporates by reference the above paragraphs of this Amended Complaint as though fully set forth herein.

76. As described throughout this Amended Complaint, Defendants violated the California Comprehensive Computer Data Access and Fraud Act because:

- i. Defendants knowingly accessed and without permission altered, damaged, and used the data, computer(s), computer system(s), and computer network(s) of Telesocial to either wrongfully control and/or obtain Telesocial's property and/or data.
- ii. Defendants knowingly accessed and without permission took, copied, and/or made use of data from Telesocial's computer(s), computer system(s), and/or computer network(s), and/or took or copied supporting documentation residing on such computer(s), computer system(s), and/or computer network(s).
- iii. Defendants knowingly and without permission used Telesocial's computer services, and/or caused them to be used.
- iv. Defendants knowingly accessed and without permission added, altered, and/or damaged the data, computer(s), software, and/or computer programs that resided on Telesocial's computer(s), computer system(s), and/or computer network(s).
- v. Defendants knowingly and without permission provided and/or assisted in providing a means of accessing Telesocial's computer(s), computer system(s), and/or computer network(s).

vi. Defendants knowingly and without permission accessed or caused to be accessed Telesocial's computer(s), computer system(s), and/or computer network(s).

77. Each of the Defendants, between and among themselves: (i) conspired and agreed to participate in a scheme to knowingly access Telesocial's computer servers without permission for the purpose of altering, damaging, taking, copying, using Telesocial's data or computers to obtain Telesocial's proprietary information and code; (ii) committed acts or engaged in wrongful conduct in furtherance of that scheme including by creating fictitious Facebook accounts and aliases to conceal their conduct, accessing Telesocial's computer servers and obtaining proprietary information and code from those servers, using hacking tools to access proprietary information and code from Telesocial's servers, and using Telesocial's application and computer servers in violation of the Terms of Use and/or in a manner intended to harm Telesocial; and, (iii) Telesocial was harmed and suffered damages as a result of Defendants' conduct.

78. At all relevant times, the Individual Defendants acted with the knowledge and consent of Orange, and/or as agents of Orange.

79. As a result of Defendants' actions, Telesocial has suffered damages as described above in an amount not yet ascertained. Telesocial is entitled to recover damages adequate to compensate it for Defendants' illicit activities in an amount to be determined at trial.

80. Telesocial is further entitled to recover attorney fees pursuant to California Penal Code Section 502(e)(2).

81. Telesocial is also entitled to recover punitive or exemplary damages pursuant to California Penal Code § 502(e)(4) because Defendants' violations, as more fully set forth above, were willful, and were committed with oppression, fraud, and/or malice.

COUNT THREE: BREACH OF CONTRACT

(Against All Defendants)

82. Telesocial realleges and incorporates by reference the above paragraphs of this Amended Complaint as though fully set forth herein.

1 83. In registering to obtain access to Telesocial's application, Defendants agreed to the
2 Telesocial Terms of Use. Prior to gaining access to the application, users were directed to a pop up
3 screen that provides a blue "Go to App" or gray "Cancel" button at the top right, and just below
4 those buttons a line of grey text informs the user that, "[b]y proceeding you agree to Call Friend's
5 Terms of Use and Privacy Policy." The phrases "Terms of Use" and "Privacy Policy" provided
6 prospective users with active links to Telesocial's Terms of Use and Privacy Policies, and identified
7 themselves as hyperlinks through their distinguishing blue font.

8 84. Telesocial abided by the Terms of Use.

9 85. The Terms of Use state: "All use of the Telesocial API, its code, any docs, SDK™,
10 content, and related materials made available to you is subject to and must comply with these Terms
11 of Use."

12 86. The Terms of Use require, in Section 1, that registered users agree "not [to] enable
13 the following":

14 "[s]elling, renting, leasing, subleasing, sub licensing, distributing,
15 reselling or in any other way publishing the Telesocial API or service
16 to any third parties which may develop derivative works without our
17 approval";

18 "use [of] the service in any competitive purpose"; and

19 "use of the service in any way that is unlawful."

20 87. The Terms of Use further provide, in Section 2, restrictions on "Use of the Telesocial
21 Network" as follows:

22 "Use of the Telesocial service should not include reverse engineering
23 the system or service or doing malicious things to our features,
24 functionality and service via our API and SDK. You will not attempt to
25 sabotage the Telesocial service, interfere with it, attempt to disrupt or
26 disable any of our API servers or conduct any attacks. Your use of the
27 Service may be terminated at any time for any reason whatsoever, and
28 you must respect the Intellectual Property contained within our site and
Service."

88. The Terms of Use is a fully integrated agreement, and provides that "[b]y using the
Services, You agree that the laws of the State of California will govern this Agreement and any
dispute of any sort that might arise between You and Telesocial."

89. Defendants breached the Terms of Use by failing to abide by the provision that prohibits “[s]elling, renting, leasing, subleasing, sub licensing, distributing, reselling or in any other way publishing the Telesocial API or service to any third parties which may develop derivative works without our approval.” In particular, the Defendants sold, leased, subleased, sublicensed, distributed, resolved, and/or otherwise published the Telesocial API and/or service to Facebook, as well as to Facebook users who are Orange customers. In addition, the Individual Defendants sold, leased, subleased, sublicensed, distributed, resolved, and/or otherwise published the Telesocial API and/or service to Defendant Orange.

90. Defendants also breached the Terms of Use by violating the provision prohibiting “use [of] the service in any competitive purpose.” Defendants used the service to make unauthorized copies of, and access confidential information regarding, Telesocial’s products so that Orange, with Facebook’s help, could use Telesocial’s technology in competition with Telesocial and Telesocial’s other prospective business partners.

91. Defendants further breached the Terms of Use by violating the provision prohibiting “use of the service in any way that is unlawful.” In particular, Defendants used the service in violation of the Computer Fraud and Abuse Act, the California Comprehensive Computer Data Access and Fraud Act, and the California Uniform Trade Secrets Act, as more fully set forth herein.

92. Defendants further breached the Terms of Use by: reverse engineering the system or service; doing malicious things to Telesocial’s features, functionality and service, including tampering with Telesocial’s computer servers through the use of hacking tools; attempting to disrupt or disable the computer servers by intentionally causing errors and failures; and failing to “respect the Intellectual Property contained within [Telesocial’s] site and Service.”

93. As a result of Defendants’ breach of the Terms of Use, Telesocial has suffered damages in an amount not yet ascertained. Telesocial is entitled to recover damages adequate to compensate it for Defendants’ breach in an amount to be determined at trial.

94. The Terms of Use further provide:

You agree to ... indemnify, defend and hold us ... harmless from and against any and all ... losses, damages, liabilities, ... costs and expenses (including reasonable attorneys’ fees), arising out of or in

connection with any claim arising out of (i) Your use of the Services, Telesocial API and related material in a manner not authorized by this Agreement, and/or in violation of the applicable restrictions, any other active policies, and/or applicable law, ... (iii) Your violation of any term or condition or any applicable additional policies, including without limitation, Your representations and warranties, or (iv) You or Your employees' or personnel's negligence or willful misconduct.

95. Because Telesocial's claims set forth in this Amended Complaint arise out of (i) Defendants' unauthorized and illicit use of the Services, Telesocial API, and related material; (ii) Defendants' violation of their own representations and warranties regarding their intended use of the Telesocial application; and (iii) Defendants' negligence and/or willful misconduct (including the negligence and/or willful misconduct of Orange's employees and/or personnel), Telesocial is entitled to recover—and does seek to recover—its losses, damages, liabilities, costs and expenses, and reasonable attorneys' fees in pursuing this action.

COUNT FOUR: BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING

(Against All Defendants)

96. Telesocial realleges and incorporates by reference the above paragraphs of this Amended Complaint as though fully set forth herein.

97. Telesocial and Defendants were parties to the Terms of Use, and Defendants owed a duty of good faith and fair dealing to Telesocial arising therefrom.

98. Telesocial abided by the Terms of Use.

99. Defendants breached their duty of good faith and fair dealing by unfairly interfering with Telesocial's right to receive the benefits of the Terms of Use. In particular, Defendants unfairly interfered with Telesocial's right to restrict access to legitimate users and/or limit use of the Telesocial Application only for lawful and noncompetitive purposes, and in such a manner that the Telesocial API or service would not be distributed or any other way published to any third parties that may develop derivative works without Telesocial's approval.

100. Telesocial's expectation that Defendants would abide by the Terms of Use and not assent to the terms and conditions set forth therein with a specific intent to disobey them was reasonable and justified.

COUNT FIVE: VIOLATION OF THE CALIFORNIA UNIFORM TRADE SECRETS ACT

Cal. Civ. Code § 3426, et seq.

(Against All Defendants)

102. Telesocial realleges and incorporates by reference the above paragraphs of this Amended Complaint as though fully set forth herein.

103. Telesocial maintained key aspects of its proprietary Call Friends application, API, softswitch, and associated billing solutions as proprietary trade secrets that were not generally known. Specifically, Telesocial's trade secrets relevant to this dispute include:

- i. the software code for the Call Friends application;
- ii. the software code for the Telesocial API;
- iii. call routing methods and technology, including the software code for the softswitch;
- iv. the coding techniques, logic flow, modules, and routines designed by Telesocial;
- v. the routines and calls executed by the Call Friends application, API interface, and/or the softswitch including, specifically, the routines and calls that allowed Telesocial's application to integrate with Facebook and route calls; and
- vi. designs for the routing and grouping of calls to allow for scalability and flexible billing paradigms.

104. Telesocial's trade secrets are not generally known to or readily ascertainable by the public. Telesocial's trade secrets derived independent economic value from the fact that they were confidential including by, among other things, protecting the integrity of Telesocial's innovations, providing Telesocial with a competitive advantage over other social calling competitors, preserving

1 Telesocial's ability to offer valuable exclusivity to a business partner and/or providing Telesocial
2 with the competitive first-mover advantage in launching its technology in the marketplace.

3 105. In conducting its business, and at all relevant times, Telesocial took steps reasonable
4 under the circumstances to protect and maintain the confidentiality of all such information.

5 106. Telesocial required employees to maintain the confidentiality of Telesocial's trade
6 secrets. Telesocial's employees knew that Telesocial's proprietary code and application were
7 maintained on a secure server, and that only limited information should be shared with prospective
8 business partners.

9 107. To further protect its trade secrets, Telesocial restricted the information it provided to
10 prospective business and/or development partners and specifically refused to disclose certain critical
11 information regarding the operation of its Call Friends application, API, and softswitch to
12 prospective partners including, how the features of its social calling application are implemented.

13 108. All such information constitutes a "trade secret" in accordance with Cal. Civ. Code §
14 3426.1(d). Specifically, Telesocial's proprietary information comprises one or more formulae,
15 patterns, compilations, programs, devices, methods, techniques, and/or processes, each and all of
16 which derive independent economic value from not being generally known to the public or to other
17 persons who could obtain economic value from its disclosure or use.

18 109. By and through their employees and/or agents, the Defendants misappropriated
19 Telesocial's trade secrets within the meaning of Cal. Civ. Code § 3426.1(b).

20 110. By and through their employees and/or agents, Defendants acquired Telesocial's
21 trade secrets by means that each knew or had reason to know to be improper, such as by
22 misrepresentation, breach and/or inducement of a breach of restrictions on access, use, or disclosure
23 of Telesocial's trade secrets, and/or espionage through electronic or other means including, but not
24 limited to, the unauthorized access of Telesocial's computer servers, and the initiation of
25 unauthorized telephone calls using Telesocial's application.

26 111. Each of the Defendants, between and among themselves: (i) conspired and agreed to
27 participate in a scheme to unlawfully, and by improper means, obtain, use, and/or disclose
28 Telesocial's proprietary information and code; (ii) committed acts or engaged in wrongful conduct in

1 furtherance of that scheme including by accessing and using Telesocial's computer servers to obtain
2 proprietary information and code, initiate phone calls, and employing hacking tools to do the same,
3 and then disclosed and/or used that improperly obtained information and code without Telesocial's
4 permission; and, (iii) Telesocial was harmed and suffered damages as a result of Defendants'
5 conduct.

6 112. By and through their employees and/or agents, Defendants further misappropriated
7 Telesocial's trade secrets because each such Defendant disclosed and/or used Telesocial's trade
8 secrets without Telesocial's express or implied consent at a time where Defendants knew or had
9 reason to know that:

- 10 i. such Defendant used improper means to acquire such trade secrets; and/or
- 11 ii. such Defendant's knowledge of Telesocial's trade secrets was (A) derived
12 from or through a person who acquired the same through improper means, (B)
13 acquired under circumstances giving rise to a duty to maintain the secrecy or
14 limit the use of Telesocial's trade secrets, and/or (C) derived from or through
15 a person who owed a duty to Telesocial to maintain the secrecy or limit the
16 use of Telesocial's trade secrets.

17 113. Orange disclosed and/or used Telesocial's trade secrets without Telesocial's
18 permission when Orange filed an international patent application (No. WO/2014/080131) claiming a
19 filing and priority date of November 21, 2012—the same day Party Call was announced on stage by
20 Orange's CEO—titled "Voice Communication Service From A Social Network," falsely identifying
21 Defendants Anne Benrikhi, Olivier Godiniaux, and Benoit Amet, the non-technical business person
22 assigned to Telesocial during negotiations, as the purported inventors, and disclosing Telesocial's
23 method for connecting voice calls through a social network.

24 114. Orange further disclosed Telesocial's trade secrets to Facebook without Telesocial's
25 consent after having acquired such trade secrets by improper means including, but not limited to,
26 unauthorized access of Telesocial's application and servers, and the initiation of unauthorized
27 telephone calls using Telesocial's application.
28

1 115. By and through their employees and/or agents, Defendants used Telesocial's trade
2 secrets to develop a copy of Telesocial's social calling application and platform, to gain a
3 competitive advantage allowing them to accelerate that development, to develop related business
4 processes such as calling plans and billing processes, and to launch at least one social calling
5 application offered to Orange and Facebook subscribers and users.

6 116. By and through their employees and/or agents, Defendants made such use of
7 Telesocial's trade secrets despite knowing or having reason to know that Defendants had obtained
8 such information by improper means including, but not limited to, unauthorized access of
9 Telesocial's computer servers; and the initiation of unauthorized telephone calls using Telesocial's
10 application. Defendants further made such use of Telesocial's trade secrets despite knowing that
11 each had an obligation to maintain the secrecy or limit the use of Telesocial's trade secrets including,
12 without limitation, obligations arising from the Terms of Use and at common law.

13 117. The acts complained of herein occurred, at least in part, within three years preceding
14 the filing of this Amended Complaint and/or relate back to the date of filing of Telesocial's original
15 Complaint.

16 118. Telesocial was harmed, and Defendants unjustly enriched, as a direct and proximate
17 result of Defendants' misappropriation of Telesocial's trade secrets.

18 119. Defendants' misappropriation of Telesocial's trade secrets was a substantial factor in
19 causing Telesocial to be harmed and Defendants to be unjustly enriched.

20 120. As a result of Defendants' conduct, Telesocial has suffered damages, and Defendants
21 were unjustly enriched, in an amount not yet ascertained. Telesocial is entitled to recover damages
22 adequate to compensate it in an amount to be determined at trial.

23 121. Because Defendants' misappropriation was willful and malicious, Telesocial is also
24 entitled to recover exemplary damages pursuant to Cal. Civ. Code § 3426.3 and attorney fees
25 pursuant to Section 3426.4.

COUNT SIX: VIOLATION OF THE CALIFORNIA UNFAIR COMPETITION LAW
(FOR UNFAIR AND UNLAWFUL TRADE PRACTICES)

Cal Bus. & Prof. Code §17200, et seq.

(Against Orange)

122. Telesocial realleges and incorporates by reference the above paragraphs of this Complaint as though fully set forth herein.

123. Within four years preceding the filing of this Amended Complaint, and at all times mentioned herein, Orange has engaged, and continues to engage, in unfair and unlawful trade practices in California by engaging in the unfair and unlawful business practices described in this Amended Complaint, including the following:

- i. violating and/or causing their agents and employees to violate the Computer Fraud and Abuse Act, as described herein;
- ii. violating and/or causing their agents and employees to violate the California Comprehensive Computer Data Access and Fraud Act;
- iii. violating and/or causing their agents and employees to violate California Penal Code § 502.7 by obtaining telephone services by fraud; and,
- iv. using and/or causing their agents and employees to use fictitious names and identities to conceal the aforementioned violations.

124. In particular, Orange knowingly, willfully, and with intent to defraud a person providing telephone service (i.e., Telesocial), avoided, attempted to avoid, and aided, abetted, and caused others to avoid the lawful charge for telephone service (i) by use of a code, prearranged scheme, and/or other similar stratagem or device whereby the Defendants, in effect, sent and/or received information; (ii) by rearranging, tampering with, or making connection with telephone Telesocial's equipment, and/or by using Telesocial's telephone service with knowledge and/or reason to believe that the rearrangement, tampering, or connection existed at the time of the use; and (iii) by using deception, false pretense, trick, scheme, device, conspiracy, and/or means including using false identification, fictitious Facebook accounts, and aliases to evade detection.

1 125. Orange engaged in these unfair practices to increase their profits and gain.
2 Accordingly, Orange has engaged in unlawful trade practices, as defined and prohibited by section
3 17200, et seq. of the California Business and Professions Code.

4 126. The aforementioned practices, which Orange used to its significant financial gain,
5 also constitute unlawful competition and provide an unlawful advantage over Orange's competitors
6 as well as injury to the general public.

7 127. The acts complained of herein occurred, at least in part, within four years preceding
8 the filing of this Amended Complaint and/or relate back to the Complaint.

9 128. As a direct and proximate result of such actions, Telesocial has suffered and
10 continues to suffer injury in fact and has lost money and/or property as a result of such deceptive,
11 unfair and/or unlawful trade practices and unfair competition in an amount which will be proven at
12 trial, but which is in excess of the jurisdictional minimum of this Court.

13 129. As a direct and proximate result of such actions, Orange has enjoyed, and, unless
14 judgment is entered in Telesocial's favor, will continue to enjoy significant financial gain in an
15 amount which will be proven at trial, but which is in excess of the jurisdictional minimum of this
16 Court.

17 130. Telesocial is entitled to and does seek a declaration that the above-described trade
18 practices are unlawful and/or fraudulent.

19 131. Telesocial is further entitled to and does seek an injunction to prohibit Orange from
20 continuing to engage in the unfair trade practices complained of herein, including an injunction
21 prohibiting Orange from developing, testing, maintaining, releasing, copying, or distributing any
22 software application containing or derived from Telesocial technology, including without limitation
23 the Party Call software application.
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PRAYER FOR RELIEF

Telesocial requests entry of judgment in its favor against each Defendant for the following:

- a) A Declaration that each Defendant has committed the violations complained of herein;
- b) An injunction prohibiting each Defendant from developing, testing, maintaining, releasing, copying, or distributing any software application or platform containing or derived from Telesocial technology including, without limitation, the Party Call software application;
- c) An award of damages adequate to compensate Telesocial for its losses, together with pre- and post-judgment interest and costs, in an amount according to proof;
- d) An award of punitive and/or exemplary damages; and
- e) An award of attorneys' fees and costs;
- f) Such other costs and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

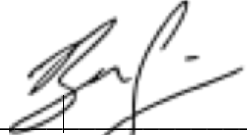
Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff Telesocial, Inc.
requests a trial by jury.

Date: 12/15/2014

Submitted By,

COLT / SINGER / BEA LLP

By:



Benjamin L. Singer

Renee B. Bea

Douglas S. Tilley

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